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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following report of the Joint Committee on the Bill further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 was presented to Lok Sabha on 18 November, 1983:—

COMPOSITION OF THE COMMITTEE

Shri K. Mallanna—Chairman

MEMBERS

Lok Sabha

2. Begum Abida Ahmed
3. Shrimati Usha Prakash Choudhari
4. Shri Digambar Singh
5. Shri Digvijay Singh
6. Shri G. B. Gohil
7. Shrimati Bibha Ghosh Goswami
8. Shri C. Palaniappan
9. Shri Bapusaheb Parulekar
10. Shrimati Jayanti Patnaik
11. Prof. Satya Deo Sinha
- *12. Shri N. K. Shejwalkar
13. Shri Vijay Kumar Yadav
- @14. Shri Jagan Nath Kaushal

*Appointed w.e.f. 16.4.1982 vice Shri R. K. Mhalgi expired.

@Appointed w.e.f. 16.4.1982 vice Shri P. Shiv Shankar resigned.

Rajya Sabha

15. Shrimati Margaret Alva
- £16. Shrimati Monika Das
17. Shri V. Gopalsamy
18. Shri Dinesh Goswami
19. Dr. (Smt.) Najma Heptulla
- %20. Shri Sudhakar Pandey
21. Shri Jaswant Singh

SECRETARIAT

1. Shri H. G. Paranjpe—*Joint Secretary*
2. Shri S. D. Kaura—*Chief Legislative Committee Officer.*
3. Shri Ram Kishore—*Senior Personnel and Executive Officer.*
4. Shri T. E. Jagannathan—*Senior Legislative Committee Officer.*

LEGISLATIVE COUNSELS

1. Shri R. V. S. Peri-Sastri—*Secretary, Ministry of Law, Justice and Company Affairs (Legislative Department)*
2. Shri A. K. Srinivasamurthy—*Joint Secretary and Legislative Council, Ministry of Law, Justice and Company Affairs (Legislative Department).*
3. Shri B. R. Atre—*Deputy Legislative Council, Ministry of Law, Justice and Company Affairs, (Legislative Department).*
4. Shri B. S. Saluja—*Deputy Legislative Council, Ministry of Law, Justice and Company Affairs, (Legislative Department).*
5. Shri S. M. Rai—*Assistance Legislative Council, Ministry of Law, Justice and Company Affairs, (Official Languages Wing).*

£Appointed w.e.f. 5-5-1982 *vice* Shri Baburaoji Marotraoji Deshmukh retired.
%Appointed w.e.f. 5.5.1982 *vice* Shri M. R. Krishna retired.

REPORT OF THE JOINT COMMITTEE ON THE MARRIAGE LAWS
(AMENDMENT) BILL, 1981

I, the Chairman of the Joint Committee to which the Bill* further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 was referred, having been authorised to submit the Report on their behalf, present their Report with the Bill, as considered by the Committee, annexed thereto.

2. The Bill was introduced in the Lok Sabha on 27 February, 1981. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri P. Shiv Shanker, the then Minister of Law, Justice and Company Affairs on 18 September, 1981 and was adopted.

3. The Rajya Sabha concurred in the said motion on 18 September, 1981.

4. The message from Rajya Sabha was published in Lok Sabha Bulletin—Part II on 21 September, 1981.

5. The Committee held 65 sittings in all.

6. The first sitting of the Committee was held on 25 November, 1981. As the last date for presentation of the Report was 27 November, 1981, the Committee decided to seek an extension of time for presentation of the Report.

7. At their second sitting held on 30 November, 1981, the Committee considered their future programme of work and decided to issue a press Communique inviting memoranda containing comments/suggestions on the provisions of the Bill by 31 January, 1982 from the State Governments, Union Territory Administrations, Public bodies, women's and Voluntary Social Organisations, Bar Associations/Bar Councils, Press Organisations and individuals, etc. interested in the subject matter of the Bill for their consideration.

With a view to facilitate an appropriate evaluation of the views from the cross-section of the society, the Committee also decided to issue a Questionnaire on the subject matter of the Bill.

The Committee further decided to hear oral evidence on the provisions of the Bill from the interested parties including experts.

Accordingly, a Press Communique inviting memoranda containing comments/suggestions on the provisions of the Bill, replies to the Questionnaire and requests for oral evidence was issued on 4 December, 1981. The Director General, All India Radio and the Director General, *Doordarshan*, New Delhi were also requested to broadcast the contents of the Press Communique from all Stations of All India Radio and telecast it from all *Doordarshan* Kendras on three successive days.

*Published in the Gazette of India, Extraordinary, Part II, Section 2 dated 27 February, 1981.

As per decision taken by the Committee, a circular letter inviting memoranda containing comments/suggestions on the provisions of the Bill and replies to the Questionnaire was also addressed to the Chief Secretaries of all State Governments/Union Territory Administrations, Bar Associations/Bar Councils, Press Organisations, Women's and Voluntary Social Organisations and Members of Parliament.

8. On verification from the Newspapers, it was found that the contents of the Press Communique issued on 4 December, 1981, had not received sufficient publicity. The Press Communique was, therefore, reissued on 24 December, 1981.

9. At their sitting held on 4 February, 1982, the Committee, keeping in view the importance of the subject matter of the Bill and the poor response from the public in general, decided to issue the Press Communique afresh and also to extend the last date for receipt of memoranda/replies to Questionnaire upto 15 March, 1982.

Accordingly, Press Communiques inviting memoranda containing comments/suggestions on the provisions of the Bill and replies to the Questionnaire by 15 March, 1982 was again issued on 5 February, 1982. The Director General, All India Radio and the Director General, *Doordarshan* were again requested to broadcast/telecast the contents of the Press Communique in Hindi, English and all regional languages from all Stations of All India Radio and all *Kendras* of *Doordarshan* respectively on three successive days.

10. 783 Memoranda containing comments/suggestions on the provisions of the Bill/Representations/replies to Questionnaire and Supplementary Questionnaire were received by the Committee from various State Governments, Public Bodies, Women's and Voluntary Social Organisations, individuals, etc.

11. At their sitting held on 18 March, 1982, the Committee felt that in view of the importance far-reaching consequences of the proposed legislation affecting almost every section of the society and future generations, they should hold their formal sittings outside Delhi in phases covering all the regions of the country for the purpose of hearing oral evidence on the provisions of the Bill of the cross-section of the society particularly from those organisations/individuals who were not in a position to come to Delhi.

Accordingly, the Committee held their formal sitting at Bangalore, Mysore, Tumkur, Ootacamund, Coimbatore, Madras, Quilon and Trivandrum from 21 to 29 May, 1982.

12. At their sitting held at Madras on 27 May, 1982, the Committee felt that in the light of discussions they had so far with various witnesses, who appeared before the Committee, it would be desirable to issue a Supplementary Questionnaire on the provisions of the Bill particularly seeking information on the definition of irretrievable breakdown of marriage. The Committee decided to invite suggestions from Members for preparation of the Supplementary Questionnaire.

13. At their sittings held on 8 and 30 June and 11 August, 1982, the Committee considered the draft Supplementary Questionnaire prepared by the Ministry of Law, Justice and Company Affairs alongwith the suggestions of Members thereon.

The Committee approved the Supplementary Questionnaire on the Bill and decided that it might be given Wide publicity through a Press Release and replies thereto might be invited from all those who were requested to reply to the original Questionnaire, i.e. the State Governments/ Union Territory Administrations, Bar Councils/Bar Associations, Press Organisations, Women's and Voluntary Social Organisations, Members of Parliament, individuals, etc. by 15 September, 1982.

Accordingly, a Press Communique incorporating the Supplementary Questionnaire was issued on 16 August, 1982. The Director General, All India Radio and the Director General, *Doordarshan* were also requested to broadcast/telecast the contents of the Press Communique through all Stations of All India Radio and *Doordarshan Kendras* on three successive days in English, Hindi and the regional languages.

Simultaneously the Supplementary Questionnaire was also issued to all State Governments/Union Territory Administrations, Bar Councils/Bar Associations, Press Organisations, Women's and Voluntary Social Organisations, Members of Parliament and individuals etc. inviting their replies thereto by the said date.

14. The Committee, thereafter, held their formal sittings for the purpose of hearing oral evidence on the provisions of the Bill from the cross section of the society at various places in the country including some very small towns adjacent to rural areas in phases, viz. at Amritsar, Chadigarh, Kulu, Simla and Karnal from 30 August to 7 September, 1982; at New Delhi on 29, 30 November and 1 December, 1982; at Jaipur, Udaipur, Ahmedabad, Gandhinagar, Rajkot, Bombay, Pune and Nagpur from 27 December, 1982 to 5 January, 1983; at Hyderabad, Bhubaneswar Puri, Calcutta, Gauhati, Shillong, Gangtok and Darjeeling from 27 January to 5 February, 1983; at New Delhi on 5 and 6 April, 1983; at Lucknow and Varanasi from 3 to 6 June, 1983 and at Bhopal, Gwalior, Patna and Ranchi from 1 to 7 July, 1983.

15. 566 witnesses representing both officials and non-officials, viz. Women's and Voluntary Social Organisations, Bar Councils/Bar Associations, other organisations, individuals, etc. from the cross-section of the society appeared before the Committee for expressing their views on the provisions of the Bill.

16. The Report of the Committee was to be presented to the House by the last day of the first week of the following Session Winter Session, 1981 i.e. 27 November, 1981. The Committee were granted four extensions for presentation of the Report—first on 27 November, 1981 upto the first day of the last week of the Budget Session, 1982, i.e. 3 May, 1982; second on 8 April, 1982 upto the last day of the Winter Session, 1982, i.e. 5 November, 1982; third on 4 November, 1982 upto the last day of the Monsoon Session, 1983, i.e. 26 August, 1983 and fourth on 19 August, 1983 upto the last day of the first week of the Winter Session, 1983, i.e. 18 November, 1983.

17. At their sitting held on 5 April, 1983, the Committee decided that the Record of Evidence tendered before them might be printed and laid on the Tables of both Houses of Parliament.

18. At their sitting held on 15 November, 1983, the Committee decided that two sets of memoranda/representations, etc. containing comments/suggestions on the provisions of the Bill and replies to Questionnaire/Supplementary Questionnaire might be placed in the Parliament Library, after the Report had been presented, for reference by the Members of Parliament.

19. The Committee considered and adopted the Report at their sitting held on 15 November, 1983.

20. During the course of their deliberations the Committee were informed that even the existing provisions of the law relating to divorce were unknown to almost all women in the rural areas and also to a vast majority of them in the urban areas too on account of illiteracy. Even in very genuine cases, the women-folk in general could not exercise their rights and have been the sufferers on account of economic dependence and social conditions prevalent in the country. The Committee were also informed that the introduction of the new concept of irretrievable breakdown of marriage as a ground for divorce, in its present form, without sufficient safeguards would add to the sufferings of the already oppressed women-folk and would help unscrupulous persons in their exploitation.

21. The Committee have carefully examined the implications of the proposed measure with reference to the views expressed by Members and opinions received from the public in general and have had considerable deliberations on the subject-matter. The opinions received by the Committee are almost overwhelmingly in favour of the introduction of the new concept of irretrievable breakdown of marriage as a ground for divorce. The Committee are also of the same view and in full agreement with the principle of the Bill. If a marriage has broken down and there is no possibility of reconciliation between the parties, the marriage can be regarded as having irretrievably broken down. In such a case, as pointed out by the Law Commission in their Seventy-first Report, the marriage has all the external appearance of marriage but none of the reality. The marriage is merely a shell out of which the substance is gone. In such circumstances, there is hardly any utility in maintaining the marriage as a facade after the emotional and other bonds, which are the essence of marriage, have disappeared. There can thus be no doubt whatsoever about the propriety of irretrievable breakdown of marriage being a ground for divorce. However, the Committee consider it to be the essence of the matter to ensure that this ground is applied only in those cases where there has really been irretrievable breakdown. Otherwise, it will be productive of the utmost mischief and will operate to vitally damage the institution of marriage itself. It is precisely for this reason that practically all the witnesses, who have given evidence before the Committee and the State Governments, organisations, institutions and individuals, who have sent their views to the Committee, have, while endorsing the introduction of the ground, expressed serious apprehensions about the efficacy of the proposed measure in the absence of some built-in safeguards and various other matters. Some have suggested that the ingredients of the new ground should be defined. This is well-nigh impossible task as the circumstances which lead to irretrievable breakdown of marriage vary from case to case. Some have suggested enhance-

ing of the period of separation to five or seven years and some the introduction of counselling agencies and the exhausting of all possible methods of reconciliation before pronouncing a decree of divorce on this ground. Some have suggested reasonably adequate financial and other safeguards for the women and children who may be effected by divorce on this ground. There have also been suggestions and in case of dissolution of marriage on ground of irretrievable breakdown, the property acquired by, the spouses during their marital life should be shared. This should be done, if necessary, by amending other relevant statutes.

Indeed, while the vast majority of those who have conveyed their views—whether in writing or orally—to the Committee have supported the introduction of the new ground, there have been only few who have done it in an unqualified manner. With a view to further probing into the reasons for such reserved support for the introduction of the new ground, the Committee circulated a Supplementary Questionnaire which has already been referred to earlier.

22. The Committee feel that the qualified support or the support with reservations and conditions extended to the introduction of the new ground of divorce is the consequence as much of the social circumstances prevailing in the country as of the very nature of this ground of divorce. This ground of divorce differs from all other grounds of divorce which are provided for in the existing law in a very important and fundamental manner. In the case of proceedings on the basis of any of the existing grounds, the task of the court is comparatively simple because the court has only to satisfy itself as to the fact of certain defined circumstances or conduct. On the other hand, in the case of the new ground of divorce which, as already stated, cannot be defined, the court will have to go into the conduct of the parties over a period of time, make an assessment from the psychological point of view as to whether the parties have reached a stage at which it can be said that there is no hope of reconciliation. Presently our courts are ill-equipped to do so. The courts would require the assistance of specialised marriage counsellors, social workers, may be of even psychiatrists to come to proper conclusions. While the establishment of family courts and the provisions for marriage counselling services are much needed in the case of even the existing grounds of divorce, the Committee consider the same to be indispensable in the context of the proposed new ground of divorce. The Committee feel that unless the system of family courts is introduced all over the country and a suitable procedure (including provision for marriage counselling services, consideration of matters by experts in the field of psychiatry, social behaviour, etc.) is devised, it would not be advisable to make the proposed new ground of divorce a part of the law.

23. As already stated, the Committee are of the firm opinion that the question of introducing the new ground of divorce should be taken up only after making provisions for giving effect to their suggestions as to alterations in the system of courts and procedure. The Committee realise that the implementation of these suggestions would require separate comprehensive legislation and would not fall within the scope of the Bill which is only an amending Bill. Though it may be stating the obvious, the Committee would also like to add that a properly devised machinery for enforcement of the law and a properly devised procedure would allay apprehensions which would otherwise have to be allayed by incorporating

express safeguards in the law. From this point of view also it would be advantageous to consider the form in which the proposed new ground of divorce should be introduced against the background of the system of family courts and procedure which may be attempted in the legislation for the purpose.

24. The Committee, in the circumstances, recommend that the proposed legislative measure may not be proceeded with until a system of family courts with suitable procedure is provided for. Even after providing for such a system, it will be necessary to incorporate in the law the various other safeguards mentioned earlier.

NEW DELHI;

November 17, 1983

Kartika 26, 1905 (S)

K. MALLANNA

Chairman

Joint Committee

NOTE

I have gone through the Report and I feel that the Report does not reflect the views expressed by 566 witnesses and some Members of the Committee. The Report should have included the points contained in the enclosed Note (Annexure).

As a result, I feel that the proposed Bill, after enhancing the period of separation from 3 years to 7 years, should be enacted.

NEW DELHI;

DIGVIJAY SINH

November 17, 1983.

Kartika 26, 1905 (S)

ANNEXURE

In view of the demand from many quarters for making irretrievable breakdown of marriage as a ground for divorce under the Hindu Marriage Act, 1955, Government referred the matter to the Law Commission for consideration. The Commission issued questionnaire inviting views of interested parties and bodies in this regard and after taking into account the replies received and also after considering various aspects in the matter, the Commission recommended in 1978 that irretrievable breakdown of marriage may be made a ground of divorce under the Hindu Marriage Act subject to certain safeguards. Arising out of this recommendation the Marriage Laws (Amendment) Bill, 1981 was introduced in the Lok Sabha on the 27th February, 1981. On the 27th April, 1981, 40 Members of Parliament submitted a representation to the Hon'ble Prime Minister supporting the passage of this Bill stating that it should be passed because the Law Commission Report has recommended it after eliciting the support of 37 most important women organisations in the country. The Bill was tabled for introduction in the Lok Sabha on the 7th May, 1981, a day before the adjournment of the Budget Session, but it never came up because of a No Confidence Motion against the Government.

2. Thereafter further representations were made opposing the passage of the Bill resulting in the then Minister of Law, Justice and Company Affairs (Shri P. Shiv Shanker) introducing this Bill and referring it to a Joint Committee of both the Houses of Parliament.

3. During the course of their deliberations the Committee were informed that even the existing laws of divorce were little known in the rural areas where the society still continued with the traditional practices of matrimony. Women-folk, who are economically weak and from the literacy point of view weaker, have suffered even more. Therefore, the introduction of the new concept of irretrievable breakdown of marriage as a ground for divorce without sufficient safeguards as specified in the proposed Sections 13D and 13E of the Bill would add to the sufferings of the already oppressed women.

4. I have carefully examined the implications of the proposed measure with reference to the views expressed by Members and opinions received from the public in general and the Committee have had considerable deliberations on the subject-matter. The opinions received by the Committee are almost overwhelmingly in favour of the introduction of the new concept of irretrievable breakdown of marriage as a ground for divorce. I am also of the same view and in full agreement with the principle of the Bill. If a marriage has broken down and there is no possibility of reconciliation between the parties, the marriage can be regarded as having irretrievably broken down. In such a case, as pointed out by the Law Commission in their Seventy-first Report, the marriage has all the external appearance of marriage but none of the reality. The marriage is merely a shell out of which the substance is gone. In such circumstances, there is hardly any utility in maintaining the marriage as a facade after the emotional and other bonds, which are

the essence of marriage, have disappeared. There can thus be no doubt whatsoever about the propriety of irretrievable breakdown of marriage being a ground for divorce. However, I consider it to be the essence of the matter to ensure that this ground is applied only in those cases where there has really been irretrievable breakdown.

5. Suggestions were made of the following nature:

- (i) Enhancing the period of living apart from 3 years to 5 years or even 7 years which is the prescribed period for a person not being heard of as being alive.
- (ii) introducing marriage counselling agencies and the exhausting of all possible methods of reconciliation before giving a decree of divorce on this ground.
- (iii) Reasonable and adequate financial and other safeguards may be provided for women and children who may be effected by divorce.
- (iv) Grave apprehension on the capacity of the present courts—to be equipped to implement the proposed law particularly when the court would have to go into the conduct of the parties over a period of time and make an assessment from the psychological point of view as to whether the parties have reached the stage of no return.
- (v) Introducing the system of family courts all over the country and a suitable procedure to be devised for it.
- (vi) A representation was even made that not introducing the Bill would be detrimental to woman on the grounds that a separated wife not only suffers from a greater stigma than a divorced woman but also does not have strong grounds to be financially maintained.
- (vii) Apprehension that a period of 3 years of living apart is too short because many husbands in service have to live apart from their wives for a long period.

6. By far the vast majority of those who conveyed their views whether in writing or in orally to the Committee have supported the introduction of the new ground although most of them dissent in a qualified manner. Out of 566 cases considered, only a small minority totally rejected the introduction of the Bill or totally accepted the Bill in toto. By far the biggest number were those who accepted the Bill on principle but with certain amendments within the framework of the proposed Bill. Although a suggestion was made by a Committee member to draw up a balance sheet of those largely in favour and those largely against, it was found that this was too cumbersome a task to undertake.

7. The sentiments of the Committee expressed by the majority members are that as by far a greater number of cases in the law courts today for divorce are filed by husbands, giving further laxity to the marriage laws would be to the detriment of women and that it would be to the advantage of women to remain legally married to their husbands even if they are separated for long periods. To substantiate this stand a proposal was made that a comprehensive law be drafted which would include the setting up of family courts amending the Hindu Succession Act in

favour of women and for giving greater financial claims to a divorced woman from her husband and that such a comprehensive legislation should be introduced simultaneously along with the proposed Bill. Members of the Committee who are in minority, whilst accepting the suggestion of introducing such social legislation, argued not to make it as a precondition. But the majority members of the Committee were of the opinion of shelving the proposed Bill. Arguments such as enhancing the period of living apart from 3 years to 5 years or 7 years as a safeguard within the framework of the existing Bill and the effective implementation of Sections 13D and 13E wherein a decree of divorce under the proposed grounds cannot be given unless all conditions of meeting with the grave financial hardships to a wife are fulfilled, are not acceptable to the majority members.

NEW DELHI;

DIGVIJAY SINH

November 17, 1983

Kartika 26, 1905 (S)

MINUTE OF DISSENT

The Report is dated 15th of November, 1983. I have gone through the Report carefully and I find myself in difficulty to agree with it, that means para 20 onwards of the Report.

2. I need not go into the detailed history or rather the background for suggesting this legislation but will just like to mention that Law Commission submitted its 71st Report as back as in April, 1978. This Committee which was constituted to consider the amendment Bill proposed on the basis of the said Report also took nearly two years and two months and now today it is being found that the Committee is unable to do anything. This causes me great anxiety. The grounds on the basis of which this conclusion is being drawn, according to me, are far from convincing. The initial approach on the basis of which the investigation started, the questionnaires prepared, important witnesses and organisations examined, questions put to them in some specific direction, all go to show that some help was being sought to come to certain specific conclusions in the direction of the amendment and not otherwise.

3. According to me, in any social legislation, three main questions arise: (1) whether there is a necessity of any such provision; (2) whether any ill-effects are going to result; and (3) what means can be provided to avoid such ill-effects.

4. The present amendment Bill proposes a change in the existing divorce law. The concepts of the society regarding this aspect are bound to change with times. Divorce law can also be called as an index of "individual freedom and liberty". Though it cannot be denied that more stressing of such a freedom may also affect the marriage bonds and diminish its value. But realistic and pragmatic approach to 'divorce' has to be made and in the present concept, divorce on the ground of incompatibility has to be considered. Rightly so, the Law Commission has accepted this principle and I am happy, the Committee at least endorses this view, *vide* para 21 of the Report. But, thereafter, according to me, the Report has gone astray.

5. The first point which the Report seems to have taken note of is that "this ground is applied only in those cases where there has really been irretrievable breakdown. Otherwise, it will be productive of the utmost mischief and will operate to vitally damage the institution of marriage itself." Further a doubt has been expressed regarding the efficacy of the proposed measure.

6. *Definition of the ground.* I cannot understand how the efficacy of the proposed measure is being doubted in the light of what has been said earlier, *i.e.* agreeing with the report of the Law Commission in that respect. All the witnesses and organisations have accepted the principle and have said that there is a necessity for such a provision. So far as defining the words "irretrievable breakdown", is concerned, there is, of course, a difference of opinion. But why inability to define these

words specifically should come in the way? Even today the word 'cruelty' has not been defined and everybody knows that views in regard to the concept of 'cruelty' are changing everyday. 'Denial of sexual intercourse' to 'have sexual intercourse without contraceptive' have been held to amount to cruelty. "Contempt of Court" has not been defined; 'breach of privilege' has not been defined because it will always remain a changing concept and Courts and bodies having jurisdiction to decide will always be free to consider the change. Secondly, 'irretrievability' should also be a matter to be judged by the 'sufferers' and not by third parties. An objective view in this matter will, I am afraid, lead to inconsistencies with the object itself and, as such, this should not come in our way to legislate to execute the accepted principle.

In the same para 21, further it has been said that there is a suggestion for the 'introduction of counselling agencies' and all reconciliation methods should be exhausted, adequate financial and other safeguards for women and children should be provided, and as such it is not an absolute support but just a support with reservations. Further as an explanation of the 'financial safeguard', right to have a share in property acquired during married life also should be provided, is one of the suggestions. 'Trial by family courts' and its 'suitable procedure' is also a condition precedent before such legislation can be brought in, says the Report further.

8. As has been submitted in para 3 above of this Dissent Note of mine, the third part, is to find out ways and means to avoid the ill-effects. The ill-effects contemplated being 'social stigma' on the divorce, 'economical hardship', 'psychological ill-effects' upon the children, which are details of second part. I think the ill-effects suggested by different witnesses and the Hon'ble Members can well fall in any of the categories mentioned above. According to them, the answer is to have 'marriage counselling bodies', 'to have reconciliation', 'to guarantee more financial safeguards', say, by way of granting a share in property acquired during marriage, 'to facilitate the procedure', 'establish family courts', etc. Whether I agree with all these suggestions or not, the first question is, what is coming in our way to make all these provisions. Can any legislation claim always to be a perfect one and exhaustive one? If there be one or two, such suggestion cannot directly form part of this legislation, recommendation to that effect could be made and this cannot, to my mind, be a ground to refuse to legislate at all. However, I am afraid, it appears from the report that concepts regarding the above points are also not clear to the Committee. Although I may not fully agree with the provision, proposed Sections 13D and 13E of the Bill take care of a more wider area regarding financial aspects and care of children than what the Committee contemplates. The words "financial hardship" have not been defined and, as such, any circumstance can well be considered by the Court. If the idea for providing a share in the property is to have an assurance that the financial condition of the divorced lady is well secured, then existing provision of the Bill according to me, has even wider scope than a mere suggestion of giving a share in the property. We can contemplate of a case where the husband and wife do not have much of the acquired property. What share the divorcee will get in such a case? But, according to the present provision, the Court can grant a relief by refusing the decree for divorce.

9. *Marriage Counselling Bodies.* This concept is yet new to our country and it is not clear what will be the function of these Marriage Counselling Bodies? Whether they will be voluntary organisations or professionals or appointees by the Government is not yet clear. Looking to the present social and educational status of our society, how many such bodies can come up? Should we on account of such a vague and indefinite idea refuse to grant a relief by way of recognition of broken marriages.

10. *Reconciliation.* There is already a provision for reconciliation in the Marriage Laws. Any further amendment, I don't know, why cannot be done, if at all necessary.

11. *Family Courts.* Family Courts also again is a vague concept. What should be its constitution, what should be its personnel, how many such Courts can be made available, are again all such points on which Committee has never come to any definite conclusion. How then it can be said that without such a provision, the divorce law would be premature.

12. *Children.* Unfortunately, the Report does not take into account the difficulties of children though the proposed law has done so by making a provision for their maintenance, etc., vide proposed Section 13E of the Bill. It is true that no law can make a provision for parental loss or the hardship caused by the psychological problems. But that does not seem to be a ground which the Committee feels necessary to be taken into account. But, as I have expressed, if necessary some other provision can be added.

13 *Social Stigma.* Condemnation of a divorced lady is an unfortunate part of our social thinking. But from evidence we know that it is not so in Himachal Pradesh, nor in some of the southern parts of our country, nor in major part of our society of "little less than the middle class strata" in the whole of our country. The problem is only with the few middle class people and their concepts are also fast changing. Actually, this is a notion founded on no footing and, as such, is bound to fall flat with the lapse of time. The popularity of cinema is helping a lot in this direction. Divorce is not being looked after as bad as it used to be 20 years before. And moreover, I fail to understand how can such a 'stigma' in case of divorce on other grounds already provided can be distinguished from a stigma in the case of "an incompatible marriage"? If not, why make it a pretext?

14. I am, therefore, compelled to write that the inferences and the conclusions of the Committee have no sound footing at all. Once the principle having been accepted and the ill-effects properly assessed, and when it is possible to make necessary amendments in the proposed Bill and to bring the law in conformity with the needs of the society, why should we shirk?

15. I am also a little surprised to see the role of the Government at the time of formation of the Report. For all the time they have been agreeing more or less as to what I have said in the above paragraphs. Social legislation is also a responsibility of the Government. If in principle any legislation is accepted and as they have already done it by

accepting the Law Commission's Report and introducing this Law, is it not their duty to try that such a legislation gets through and should they not try to meet the grounds which do not in any way can be supported. Prior to the formation of this Report, the Ministry of Law has always kindly guided the Committee in assessing all sided impact of proposed clauses. I still hope that in Parliament they put their view independently.

16. For these reasons, I am specifically of the view that this legislation is a necessity and if at all some necessary amendments are required to be made, those can be done so.

17. I am not in favour of destabilising marriages, I consider marriages as foundation of a healthy society. But I will not like the ailing marriages to drag on. Lord Weslbury observed more than a century ago "Marriage is the foundation of social society and no part of the laws and institutions of a country can be of more vital importance to its subjects than those which regulate the manner and conditions of a forming an, if necessary, of dissolving the marriage contract".

18. It will, therefore, be necessary to terminate a marriage which failed to achieve its object. Better said by Mr. Cheshier "Divorce since it disintegrates the family unity is, of course, a social evil in itself. But it is a necessary evil. It is better to break the unity of the family than to wreck the future happiness of the parties by binding them to a companionship that has become odious".

19. I, therefore, disagree with the report, and wish that the Committee should reconsider the matter and incorporate amendments, if necessary.

NEW DELHI;

N. K. SHEJWALKAR

November 16, 1983.

Kartika 25, 1905 (S)

BILL NO. 23-B OF 1981

A Bill further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954

Be it enacted by Parliament in the Thirty-second Year of the Republic of India as follows :—

1. This Act may be called the Marriage Laws (Amendment) Act, 1981.

25 of 1955

2. In the Hindu Marriage Act, 1955 (hereinafter referred to as the Hindu Marriage Act), after section 13B, the following sections shall be inserted, namely :—

Short
title.
Inser-
tion of
new
sections
13C, 13D
and
13E.

‘13C. (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1981] on the ground that the marriage has broken down irretrievably.

Divorce
on the
ground of
irretriev-
able
break-
down of
marriage.

(2) The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same house hold.

Wife's
right to
oppose
the
petition
on the
ground
of hard-
ship.

13D. (1) Where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C; and

(b) if apart from this section the court would grant a decree on the petition;

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the court is of opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

Restric-
tion on
decree for
divorce
affecting
children.

13E. The court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties divorced in the marriage.

Explanation.—In this section, the expression “Children” means—

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and

(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves.’

3. In section 21A of the Hindu Marriage Act, in sub-section (1), after the word and figures "section 13", at both the places where they occur, the words, figures and letter "or section 13C" shall be inserted.

Amend-
ment of
section
21A.

4. In section 23 of the Hindu Marriage Act, in sub-section (1), in clause (a), after the word and figure "section 5", the words, figures and letter "and except in cases where the petition is presented under section 13C" shall be inserted.

Amend-
ment of
section 23.

43 of 1954.

5. In the Special Marriage Act, 1954 (hereinafter referred to as the Special Marriage Act), after section 28, the following sections shall be inserted, namely:—

Insertion
of new
sections
28A, 28B
and 28C.

28A. (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1981] on the ground that the marriage has broken down irretrievably.

Divorce
on the
ground
of ir-
retriev-
able
break-
down of
marriage.

(2) The court hearing such a petition shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be constructed as reference to their living with each other in the same household.

28B. (1) Where the wife is the respondent to a petition for the dissolution of a marriage by a decree of divorce under section 28A, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage.

Wife's
right to
oppose
the
petition
on the
ground
of hard-
ship.

(2) Where the grant of a decree is opposed by virtue of this section, then—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 28A; and

(b) if apart from this section, the court would grant a decree on the petition;

the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if the court is of opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

Restric-
tion on
decree
for
divorce
affecting
children.

28C. The court shall not pass a decree of divorce under section 28A unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

Explanation.—In this section, the expression “children” means,—

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and

(c) children who, because of special condition of their physical or mental health, need looking after and have not the financial resources to support themselves.’.

Amend-
ment of
section
40A.

6. In section 40A of the Special Marriage Act, in sub-section (1), after the word and figures “section 27” at both the places where they occur the words, figures and letter “or section 28A” shall be inserted.

AVTAR SINGH RIKHY,
Secretary.